IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6603 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IQBAL ALIAS IBU @ SASLU S/O RASULMINYA KAGDI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 16.4.2003 passed by the Police Commissioner, Ahmedabad City, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 16.4.2003.

2. The grounds served upon the petitioner discloses that the detaining authority relied upon two offences registered against the petitioner and others on 28.2.2003 and 01.3.2002. The first offence came to be registered under Sections 452, 427, 294(c), 506(2) of the IPC while the second offence came to be registered under Sections 143, 307, 427 of the IPC and Section 4 of the Explosive Substance Act. The detaining authority also relied upon in-camera statements of the witnesses recorded by the proposing authority on 4.4.2003 and 5.4.2003 and verified by the detaining authority on 10.4.2003. From the above material, the detaining authority came to the conclusion that the petitioner was dangerous person and his activities were prejudicial to the maintenance of public order.

3. Learned Advocate Mr. A.S.Dave for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. Learned AGP has placed on record the affidavit-in-reply of the detaining authority which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the ground that the right of the detenu as guaranteed under Article 22(g) of the Constitution of India is whether breached. It is on record that the petitioner through is Advocate preferred a representation after his detention to the Government on 29.4.2003. The copy of the said representation is placed at page 143 of the of the compilation of this Special Civil Application. Admittedly, the said representation received by the Government on 30.4.2003, however, the same came to be decided ultimately on 12.5.2003. So the delay of about 12 days are caused in deciding the representation of the petitioner causing breach of the right of the petitioner to have his representation to be decided as early as possible. The order, therefore, impugned in this Special Civil Application is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is

allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 16.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair